

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST X

RE: THE CREMATED REMAINS OF AA

JUDGMENT

- 1) The publicly available copy of this judgment will be anonymized not only in respect of the name of the Petitioner and her family members but also in respect of the name of the churchyards concerned. In doing so I have taken account of the importance of justice being done in the public eye; nonetheless such anonymization is appropriate in the circumstances of this case in the light of nature of the matters relating to persons alive and dead which have to be addressed in this judgment.

The Factual Background.

- 2) The late AA and BB were married for some forty years. It was a second marriage for both of them and each had children from their previous marriages. BB died in 2008 and her remains were interred in the grave in the closed churchyard of St. X which already contained the remains of her parents.
- 3) BB had a granddaughter, CC (the daughter of BB's daughter from her first marriage). In 2014 CC caused her solicitors to send a letter to AA informing him that she was going to bring forward allegations that he had abused her sexually between the ages of five and thirteen. I must make it clear that I am not in a position to make any determination as to what happened between CC and AA and I am not purporting to do so. The latter did not face criminal proceedings in relation to these matters during his lifetime and he is no longer alive to answer the allegations. Moreover, his children have questioned some aspects of CC's assertions and they reject the allegations. However, I have no reason to doubt that CC is setting out the truth as she genuinely believes it to be. She sets out an account of prolonged and repeated sexual abuse which has had a lasting and harmful effect upon her. It is sufficient for present

purposes to note that CC's account is put forward in good faith and that it is accepted as truthful by her parents (BB's daughter and son-in-law) and by her great-aunts and uncles (BB's siblings).

- 4) DD, the current petitioner, is the sister of BB. She and her husband intend in due course to be buried in the grave with which I am concerned. DD learnt of CC's allegations in late 2014 and caused solicitors to send a letter to AA saying that he no longer had her permission to be buried in the grave containing the remains of her parents and of BB. There is some dispute as to whether AA received that letter and it had no legal effect other than to set out DD's views. In January 2015 DD met Rev FF who was then the vicar of St X. DD explained the position to FF and gave him a copy of the letter from the solicitors to AA. FF assured DD that AA's remains would not be interred in the grave in the churchyard of St. X.
- 5) AA died in November 2016. When she learnt of this DD met with Rev GG who had become the vicar of St X. GG repeated to DD the assurances that AA would not be interred in the plot containing the remains of BB and her parents.
- 6) GG must have forgotten about his conversation with DD because on 28th March 2017 he contacted the Registry by email and telephone. He said that he had arranged to inter AA's cremated remains in an existing family grave containing the remains of BB and her parents. GG said that he had arranged for the interment to take place on 30th March 2017 and sought urgent permission for this to be done. I gave that permission on the basis that a petition was to follow. A petition was, indeed, subsequently presented by EE, AA's daughter, seeking retrospective authority for the interment. Neither the petition nor the accompanying documents made any reference to the facts that BB had been married previously and had children from that marriage and that her parents had other children. The petition was granted and a faculty issued authorising the interment which had already taken place.
- 7) In June 2017 DD learnt what had happened and approached Rev HH who was then overseeing matters at St X's during the absence of GG. A meeting was arranged attended by HH, the Archdeacon, and members of each family.

EE and one of her brothers were at that meeting and at that stage they agreed that the remains of AA should be exhumed and reinterred elsewhere. EE subsequently changed her mind and withdrew her agreement to the exhumation.

- 8) It was against that background that DD brought the current petition seeking the exhumation of AA's remains and their reinterment in the grave in the churchyard of St Y which contains the remains of his parents.

The Procedural History.

- 9) The incumbents of both St. X and of St. Y have agreed to the proposed course.
- 10) I caused special notice to be given to EE and to her brothers. EE and one brother have responded confirming that provided they are informed of the time and date of the reinterment they no longer object to the petition. There was no response from EE's other two brothers.
- 11) I concluded that it was expedient for the matter to be determined on the basis of written representations. DD agreed to that course and made short further representations.

The Applicable Principles.

- 12) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church. Exhumation is to be exceptional and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question).

- 13) I am satisfied that in rare cases the fact that the presence of particular remains in a grave has become the cause of distress or conflict is capable of being an exceptional circumstance justifying exhumation. The Court of Arches in *Re Blagdon Cemetery* set out certain matters which were capable of being exceptional circumstances justifying exhumation. It did not include such distress or conflict amongst those matters but the list set out there did not purport to be exhaustive. Each case must be considered on its particular circumstances with the court remembering the force of presumption of permanence and taking care not lightly to regard considerations of distress as being exceptional circumstances for these purposes.
- 14) That was the approach which I took in this court in *Re St Paul, Fazeley* [2016] Ecc Lic 4. There the remains of a son had been interred in his parents' grave without faculty and without the consent of his siblings in circumstances where those siblings objected to the interment. The interment meant that the parents' grave had become a focus of disquiet and grievance between members of the family. I authorised exhumation in those circumstances. I had earlier, in *Re St Mary, Haseley* (Coventry 2009), set out my view that distress and conflict arising out of the interment in a particular site could be an exceptional circumstance warranting exhumation although on the facts of that case it did not.
- 15) In the Liverpool Consistory Court Hamilton Ch took a similar view in *Re X 20 CCCC 29*, (2002) 6 Ecc LJ 413. In that case the court authorised the exhumation of a father's remains from the grave which he shared with his wife and one of their daughters. This is because it had come to light that the father had abused that daughter (and it appears another daughter). The presence of the father's remains prevented the peaceful and quiet mourning at that graveside by family members of his wife and of the abused daughter whose remains were in the same grave. Hamilton Ch held that the facilitation of such peaceful and quiet mourning was one purpose of Christian burial and interference with it warranted exhumation. That case was decided before the Court of Arches had given judgment in *Re Blagdon Cemetery* and Hamilton Ch had regard to the approach laid down in rather different terms by the

Chancery Court of York in *Re Christ Church Alsager* [1998] 3 WLR 1394. However, it is apparent that Hamilton Ch approached the matter on the footing that something exceptional was needed to justify exhumation but that the circumstances of the particular case were exceptional.

- 16) A similar approach has been applied by other chancellors. Thus in *Re St Ann, Rainhill* (Liverpool 2004) 23 CCCC 4 Hedley Ch held that conflict between family members could be an exceptional circumstance warranting exhumation where the interment had become a focus for such acrimony. In the Manchester Consistory Court Tattersall Ch in *Re St Mark, Worsley* (2007) 9 Ecc LJ 147 held that exhumation was justified where a wife had caused her late husband's remains to be interred in the grave of her parents and grandparents (and in which she wished to be interred) before discovering that he had conducted a longstanding extra-marital affair. The petitioner no longer wished to be interred in the same grave as her late husband and she and her family members found the presence of his remains in the same grave as those of her parents and grandparents distressing. Both those cases were in the province of York and those chancellors were subject to the approach laid down in *Re Christ Church Alsager* rather than, as I am, to that set out in *Re Blagdon Cemetery*. However, it is of note that both Hedley and Tattersall Chh expressed themselves to be applying the *Re Blagdon Cemetery* approach. Moreover in *Re St Mary, Polstead* [2017] Ecc SEI 2 Etherington Ch found that there were exceptional circumstances justifying exhumation where there had been a failure to obtain the support of the relatives of those already interred in a grave before a further interment and where those relatives objected to the interment.

Analysis.

- 17) There was a deliberate decision to inter the remains of AA in the grave in St X. Moreover, that interment has the effect that his remains are in the same grave as those of his wife of forty years and her parents. Moreover, I must be conscious that the allegations against AA although put forward in good faith and genuinely believed by CC and her family are not accepted by AA's children.

- 18) Against those considerations I take account of the very real distress which is felt by BB's descendants and her siblings at the presence of AA's remains in the same grave as her and her parents. The grave has become a focus of distress and grievance. In that regard I find it is particularly significant that the grave contains the remains not just of BB but also of her parents. It follows that the presence of AA's remains impacts not only on BB's descendants but also on her siblings attending to mourn their parents. It is also of particular note that DD had received assurances before AA was interred that his remains would not be placed in this grave. If GG had remembered his conversation about this with DD he would have been highly unlikely to have supported the interment. It is also highly regrettable that the court was not given the full picture at the time of authorising the interment or at the time of EE's subsequent petition for a confirmatory faculty. I have no reason to suspect that this was the result of anything other than oversight on the part of GG and of unfamiliarity with the petition process on the part of EE. Nonetheless, if the position had been fully set out in advance of the interment and in particular if the views of DD and her siblings had been known (as they would have been if the court had been told all the circumstances) then it is almost inconceivable that permission would have been given for the interment in the first place. Taken together I am satisfied that those matters amount to exceptional circumstances such as to be capable of justifying exhumation. I am also satisfied that the proposed exhumation and reinterment are justified and appropriate in this case.
- 19) Accordingly, a faculty will issue authorising both those steps.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
31st December 2018